No. 80-1289

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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1980

OHIO DEPARTMENT OF HIGHWAY SAFETY and DONALD D. COOK, DIRECTOR, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Administrator of the Environmental Protection Agency constitutionally may prohibit the State of Ohio from registering motor vehicles that do not pass an existing annual emission control inspection.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A25) is reported at 635 F.2d 1195. The opinion of the district court (Pet. App. A26-A35) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on December 5, 1980. The petition for a writ of cer-

tiorari was filed on January 30, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATEMENT

A. The Statutory Scheme

The Clean Air Act, 42 U.S.C. 1857 *et seq.* (the Act),[1] requires the reduction of pollutants in the ambient air in order "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. (Supp. III) 7401(b)(1).

The Administrator of the Environmental Protection Agency (EPA) must establish standards governing maximum concentrations of particular pollutants in the air (42 U.S.C. (Supp. III) 7409),[2] but the Act gives state and local governments the primary responsibility for establishing and implementing air

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[1] The Act was substantially amended and transferred to 42 U.S.C. (Supp. III) 7401 *et seq.* by the Clean Air Act Amendments of 1977, see, *infra*, pages 9-10. For the sake of clarity, citations are to the Act as amended in 1977, except where there are significant differences in the Act in effect when the case was decided; the changes are identified.

[2] This case involves only the national primary air quality standards, "ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator * * * are requisite to protect the public health." 42 U.S.C. (Supp. III) 7409(b)(1). A national secondary ambient air quality standard is "a level of air quality the attainment and maintenance of which in the judgment of the Administrator * * * is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [each] air pollutant [for which criteria have been established] in the ambient air." 42 U.S.C. (Supp. III) 7409(b)(2).

quality control programs (42 U.S.C. (Supp. III) 7410). The Act requires each state to submit to the Administrator plans for "implementation, maintenance, and enforcement" of the national standards for every portion of the state within nine months after the Administrator promulgates those standards. 42 U.S.C. (Supp. III) 7410(a)(1).

These state plans must provide a regulatory scheme for controlling emissions from stationary and moving sources of pollution to the extent necessary to attain the national standards within each of the state's air quality control regions (42 U.S.C. (Supp. III) 7410 (a)(1). Within four months after its submission, the Administrator must approve the state's implementation plan if it satisfies the statutory criteria; if it does not, he must promulgate a substitute plan for the state that does satisfy those criteria. 42 U.S.C. (Supp. III) 7410(a)(2) and (c). See *Train* v. *Natural Resources Defense Council, Inc.*, 421 U.S. 60, 64-67 (1975).

The statute specifically defines the criteria for a satisfactory implementation plan, which must provide a regulatory scheme for controlling emissions from both stationary facilities and motor vehicles to the extent necessary to attain the national ambient air quality standards within the state within 3 years of the plan's federal approval or promulgation. 42 U.S.C. 1857c-5(a)(2)(A)(i).[3] Each plan must include emission limitations for pollution sources, schedules for compliance, and provisions for such additional methods of pollution control as may be necessary. In particular, the Act specifically provides that an implementation plan must include, if necessary

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[3] The 1977 Amendments permit an extension of this deadline under certain circumstances. 42 U.S.C. (Supp. III) 7410(a)(2)(A); see, *infra*, pages 9-10.

to insure attainment and maintenance of the national standards, motor vehicle emission control inspection and maintenance programs. 42 U.S.C. (Supp. III) 7410(a)(2)(B) and (G).[4]

Enforcement of the state implementation plan is a federal, as well as a state, responsibility. The authorization for federal enforcement is contained in 42 U.S.C. (Supp. III) 7413. Subsection (a)(1) authorizes the Administrator to issue a notice of violation to "any person * * * in violation of any requirement of an applicable implementation plan."[5] If the violation continues for another 30 days, the Administrator is authorized to issue an "order requiring such person to comply with the requirements of such plan" or he may proceed under 42 U.S.C. (Supp. III) 7413(b). Subsection (a)(2) addresses situations where there are widespread violations of an implementation plan that appear to result from a state's failure to enforce the plan effectively. If the Administrator finds such a failure, he may notify the state and, if the situation is not corrected within 30 days, issue a public notice and assume primary federal enforcement. In periods of federally assumed enforcement, the Administrator may issue compliance orders or proceed under 42 U.S.C. (Supp. III) 7413(b)

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[4] An inspection and maintenance program checks pollution emission levels of motor vehicles, and requires those with excessive emissions to be adjusted. A continuing inspection program is important, because the efficiency of a vehicle's emission control system will decrease with the passage of time if it is not properly maintained and repaired. The program identifies vehicles in need of emission control system adjustment and repair.

[5] The term " 'person' " includes a "State, municipality, [or] political subdivision of a State * * *" (42 U.S.C. (Supp. III) 7602(e)).

without prior 30-day notice to the person in violation or to the state.

42 U.S.C. (Supp. III) 7413(b) authorizes the Administrator to commence a civil action for injunctive relief or for recovery of civil penalties. A civil action is authorized whenever a person refuses to comply with an order, continues to violate any requirement of an implementation plan for more than 30 days after notification, or violates a requirement of an implementation plan during a period of federal enforcement under 42 U.S.C. (Supp. III) 7413(a)(2).

B. Factual Background

In 1973, the State of Ohio submitted to the EPA transportation control plans for three air quality control regions: Toledo, Dayton and Cincinnati.[6] The

[6] In 1973, acting pursuant to a court order in *Natural Resources Defense Council, Inc.* v. *EPA*, 475 F.2d 968 (D.C. Cir.), the Administrator required states needing transportation control plans to amend their implementation plans to include such plans. 38 Fed. Reg. 2194, 10851 (1973). Several states failed to amend their plans, and the Administrator promulgated federal transportation control plans for those states, including inspection and maintenance programs for motor vehicles; he ordered the states to implement those plans. Several states successfully challenged EPA's authority under the Clean Air Act and the Constitution to require the states to implement the federally promulgated plans. *Brown* v. *EPA*, 521 F.2d 827 (9th Cir. 1975) (*Brown I*); *Maryland* v. *EPA*, 530 F.2d 215 (4th Cir. 1975); *District of Columbia* v. *Train*, 521 F.2d 971 (D.C. Cir. 1975); but see *Pennsylvania* v. *EPA*, 500 F.2d 246 (3d Cir. 1974). The cases holding the Administrator to be without his asserted authority were vacated and remanded by this Court as moot after the government conceded that the proposed federal plans would have to be modified to eliminate the requirement that the state submit legally adopted regulations to the Adminis-

Administrator approved the plans for Dayton and Toledo, 38 Fed. Reg. 30971-30972 (1973), but found the third plan inadequate to assure attainment of the primary standard for photochemical oxidants (ozone) in the Cincinnati area. 38 Fed. Reg. 30972-30974 (1973). The Administrator then promulgated an inspection and maintenance regulation for the Cincinnati region pursuant to 42 U.S.C. (Supp. III) 7410(c), to supplement the state plan. 38 Fed. Reg. 30974 (1973), 40 C.F.R. 52.1878 (hereinafter Cincinnati Regulation).[7]

The Cincinnati Regulation calls for an inspection and maintenance program for light-duty motor vehicles owned and operated within Hamilton County, Ohio, which includes the City of Cincinnati. It requires the County and City to adopt an inspection and maintenance program providing for yearly emissions testing of vehicles. The regulation bars the operation after December 31, 1975, of motor vehicles that have failed to pass the emission test, 40 C.F.R. 52.1878(f), and prohibits the City, the County and the State of Ohio from allowing the registration of such motor vehicles or allowing the operation of these vehicles on public roads or streets under their control. 40 C.F.R. 52.1878(e).[8] No one sought judicial review of the Administrator's promulgation of this

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trator. *EPA* v. *Brown*, 431 U.S. 99, 103 (1977). Thereafter, the Ninth Circuit considered an amended federally promulgated California transportation control plan. *Brown* v. *EPA*, 566 F.2d 665 (1977) (*Brown II*). See discussion, *infra*, pages 13-14.

[7] This inspection and maintenance regulation is the only EPA promulgated transportation control measure for the State of Ohio. See 42 U.S.C. (Supp. III) 7410(c).

[8] This provision is the only major provision of the Cincinnati Regulation that addresses the conduct of, or imposes a duty on, the State of Ohio.

regulation (42 U.S.C. (Supp. III) 7607(b)(1)); the County of Hamilton and the City of Cincinnati implemented an inspection and maintenance program. Both Cincinnati and the neighboring town of Norwood established and operated inspection facilities; vehicles of county residents were required to be inspected at these facilities.[9] The State of Ohio, however, failed to comply with the registration ban. Instead, the Ohio Department of Highway Safety has continued to register motor vehicles without requiring any showing that their emission control systems have passed the inspection required by the Cincinnati Regulation.[10]

On March 15, 1976, the EPA Regional Administrator issued a notice of violation to the State of Ohio, pursuant to 42 U.S.C. (Supp. III) 7413(a)(1). The notice informed the Department of Highway Safety that its action in continuing to register noncomplying motor vehicles was in violation of 40 C.F.R. 52.1878 and, hence, the state implementation plan. A conference with representatives of the EPA in May 1976

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[9] Emissions inspection equipment was installed at preexisting motor vehicle safety inspection facilities at these locations. The Cincinnati facility, which performed almost 60% of the inspections, was permanently closed by a February 11, 1981, ordinance of the City Council (App., *infra*, 1a-2a). The fate of the Norwood facility is unclear; it is currently funded only through March 31, 1981.

[10] The Ohio Department of Highway Safety is the state agency responsible for administration of laws relating to the registration and licensing of motor vehicles. Ohio Rev. Code Ann. § 4501.02 (Page Supp. 1979). Under Ohio law, annual registration is required for motor vehicles "operated or driven upon the public roads or highways." Ohio Rev. Code Ann. § 4503.10 (Page Supp. 1979). An annual license tax is also levied upon the operation of motor vehicles at the time of making application for registration. Ohio Rev. Code Ann. § 4503.02 (Page Supp. 1979).

failed to persuade the Ohio Department of Highway Safety to comply with the registration ban. Therefore, on June 22, 1976, the EPA Regional Administrator issued an order to the State of Ohio pursuant to 42 U.S.C. (Supp. III) 7413(a)(1). This order directed the State to refuse to issue license plates to any light-duty, spark-ignition powered motor vehicle owned by a resident of the County or City unless the vehicle had been certified, following an inspection made within the preceding 12 months, as being within established emissions standards. The State refused to comply with this order.

On November 18, 1976, the United States brought suit pursuant to 42 U.S.C. (Supp. III) 7413(b)(1) seeking an injunction to enforce the June 22, 1976, order.

C. The Decisions Below

Despite the State's contrary claim, the district court ruled that the prohibition against vehicle registration in the Cincinnati Regulation was intended to apply to the Ohio Department of Highway Safety (Pet. App. A29). It also ruled, however, that 42 U.S.C. (Supp. III) 7413(a)(1) does not authorize the EPA to issue a compliance order directing a state to take enforcement action contained in a federally promulgated regulation. Instead, it concluded that the sole remedy for nonenforcement by a state under the Act is the assumption of primary federal enforcement under 42 U.S.C. (Supp. III) 7413(a)(2).

On appeal, a divided court of appeals reversed. The court ruled that a state is a "person" subject to the enforcement procedure of 42 U.S.C. (Supp. III) 7413 (a)(1). Ohio's ownership and control of streets and highways, coupled with the historic practice of licensing vehicles "provide a completely rational basis for

placing upon the State the obligation to prevent use of these facilities by noncomplying vehicles" (Pet. App. A19).

Moreover, enforcement of this obligation does not unconstitutionally interfere with integral governmental functions or impair the integrity of the state or its ability to function in the federal system. See *National League of Cities* v. *Usery*, 426 U.S. 833, 851 (1976); *Fry* v. *United States*, 421 U.S. 542, 547 n.7 (1975). The Cincinnati Regulation "does not require the State to adopt legislation, establish new regulatory agencies or change its procedures for registering vehicles. It merely requires the State to deny use of state-owned facilities to those whose use adds to the national problem of pollution. Further it does not appear that compliance will entail large expenditures by the State" (Pet. App. A20-A21).

D. Subsequent Developments

While this litigation was pending in the lower courts, Congress enacted the Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 685 *et seq.* These amendments call for revisions in state implementation plans that will affect the Cincinnati Regulation. The amendments provide for the designation of nonattainment areas for particular pollutants. 42 U.S.C. (Supp. III) 7407(d). State implementation plans must bar new stationary sources in nonattainment areas after June 30, 1979, unless the plan complies with special nonattainment area provisions. 42 U.S.C. (Supp. III) 7410(a)(2)(I). These nonattainment area provisions require an implementation plan to provide for attainment of national primary ambient air standards by December 31, 1982. In the case of photochemical oxidants or carbon monoxide

(the pollutants associated with emissions from motor vehicles), attainment may be extended to not later than December 31, 1987, if the state demonstrates to the Administrator that attainment is not possible by the 1982 date despite the implementation of "all reasonably available measures." 42 U.S.C. (Supp. III) 7502(a). In that situation, the implementation plan provisions must "establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program[,] and identify other measures necessary * * *." 42 U.S.C. (Supp. III) 7502(b)(11)(B) and (C). Submission of implementation plan revisions which meet the nonattainment provision requirements was required by January 1, 1979. 42 U.S.C. (Supp. III) 7502 note. Where an inspection and maintenance program is needed, and reasonable efforts to submit such a revised state implementation plan have not been made, EPA "shall not approve" grants otherwise authorized by the Clean Air Act and the Secretary of Transportation shall not award certain highway grants. 42 U.S.C. (Supp. III) 7506(a). See *Pacific Legal Foundation* v. *Costle*, 627 F.2d 917 (9th Cir. 1980), cert. denied, No. 80-828 (Feb. 23, 1981).

The Cincinnati area is one of two regions in the State of Ohio that require vehicle inspection and maintenance programs under the 1977 Amendments (45 Fed. Reg. 73972 (1980)). On August 13, 1980, after oral argument of the present case in the court of appeals, the State of Ohio adopted legislation requiring study and implementation of an inspection and maintenance program by December 31, 1982; it revised its implementation plan to reflect this new policy.[11] On November 7, 1980, the EPA published

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[11] As a result of this legislation, the government offered to dismiss the appeal in the instant case. It concluded that there

a notice that it was considering conditional approval of the revised Ohio implementation plan. 45 Fed. Reg. 73972 (1980).

ARGUMENT

1. The present enforcement action has been overtaken by events. Its outcome is not likely to influence enforcement of the Clean Air Act because the 1977 Amendments to the Act, have significantly changed that law. The resolution of the action, moreover, is unlikely to have a significant impact even in Ohio, because the abandonment of the Cincinnati inspection program has substantially changed the factual basis on which the decisions below rested. As a result, this case is not an appropriate vehicle for the resolution of questions concerning the scope of the Administrator's authority to compel implementation of transportation control plans by the states. Cf. *EPA* v. *Brown*, 431 U.S. 99 (1977).

The Cincinnati Regulation, which limited the State's duty to a registration ban, is unique among the transportation control plans promulgated in 1973. Future inspection and maintenance programs, including registration bans, will be created under the terms of the 1977 Amendments to the Clean Air Act, Pub. L. No. 95-95, 91 Stat. 685 *et seq.* Although these amendments still contemplate that a state will implement and enforce an inspection and maintenance program for motor vehicles under certain circumstances

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was no further need to press for enforcement of the June 1976 EPA order, because the state legislation contemplates a state sponsored inspection and maintenance program by December 31, 1982, and noncomplying vehicles will thereafter be prohibited from operating on public roads. The State of Ohio opposed the government's motion to dismiss and the court of appeals denied the motion.

(42 U.S.C. (Supp. III) 7502(b)(11)(B) and (C)), the new amendments provide for methods to induce the states to create such programs, without relying on direct judicial action. See *Pacific Legal Foundation* v. *Costle*, 627 F. 2d 917 (9th Cir. 1980), cert. denied, No. 80-828 (Feb. 23, 1981). Because these inducements are likely to be successful, an enforcement action similar to the present one is unlikely under the 1977 Amendments.

Indeed, the State of Ohio has responded to the 1977 Amendments by enacting legislation authorizing the implementation of an inspection and maintenance program by December 31, 1982 (Pet. App. A122-A130). EPA expects that this state program will fulfill the goal of this enforcement action: to have an effective inspection and maintenance program in Hamilton County, Ohio. For this reason, the government explored the possibility of dismissing this action following enactment of the state statute. The court of appeals instead reversed the judgment of the district court and remanded the case for further proceedings (Pet. App. A23). Upon remand, the district court is likely to tailor any relief against the State of Ohio to take into account the new Ohio statute, to minimize inter-governmental conflict, and to foster cooperation to ensure the successful development and implementation of an inspection and maintenance program for the State of Ohio by December 31, 1982.

Moreover, in fashioning a remedy the district court will have to consider the effect of the abandonment of some or all of the municipal inspection facilities (see note 9, *supra*). This enforcement action has been litigated from the outset on the factual premise that those facilities were available to inspect motor vehicles of Hamilton County residents. The failure

of this factual predicate, while not curing the long-standing violation of the State of Ohio, may render effective relief under this enforcement action impractical.[12] The County and cities are not parties to the present action and their rights and duties under the Cincinnati Regulation, the Clean Air Act and the Constitution have not been addressed. For this reason, the relief requested in this action—compliance with the registration ban—may not be effective unless and until action is taken, beyond the confines of this case, to reinstitute inspection programs in Hamilton County.

2. Contrary to petitioners' assertions (Pet. 7-8), the court of appeals decision in this case does not conflict with the decision in *Brown II*. *Brown II* was the final decision in a series of cases which challenged the EPA's promulgation of transportation control plans for several states in 1973. *Brown* v. *EPA*, 521 F.2d 827 (9th Cir. 1975) (*Brown I*); *Maryland* v. *EPA*, 530 F.2d 215 (4th Cir. 1975); *District of Columbia* v. *Train*, 521 F.2d 971 (D.C. Cir. 1975).[13] The regulations at issue in those cases directed the states to implement a wide variety of transportation control measures in addition to the inspection and maintenance programs, including a carpool matching system, *Brown I*, *supra*, 521 F.2d at 830, and development of bicycle lanes, *District of Columbia* v. *Train*, *supra*, 521 F.2d at 979. These cases

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[12] Even if the Norwood facility is not closed, it is not likely to be adequate to inspect all the vehicles covered by the plan.

[13] See *Pennsylvania* v. *EPA*, 500 F.2d 246 (3d Cir. 1974); see generally *South Terminal Corp.* v. *EPA*, 504 F.2d 646 (1st Cir. 1974).

were vacated and remanded by this Court as moot after EPA conceded that the federal regulations had to be modified to remove the requirement that the states submit legally adopted regulations. *EPA* v. *Brown, supra.*

The Administrator then promulgated a revised inspection and maintenance regulation for California. 42 Fed. Reg. 30504 (1977). This regulation required the state to create an inspection system, provide for reinspection of failed vehicles, supervise repair facilities, and refuse to register motor vehicles that failed to comply with the program. *Id.* at 30506. Although the court in *Brown II* held that the regulation exceeded the Administrator's authority under the Clean Air Act, it specifically noted that a simple registration ban of the kind at issue here "quite plausibly resembles legitimate steps by the federal government to prevent interference with its regulation of pollution. It merely requires the state to proceed in a certain manner if it is to regulate this aspect of commerce at all" (566 F. 2d at 673). Accord, *District of Columbia* v. *Train, supra*, 521 F. 2d at 987, 991, vacated and remanded on other grounds, *EPA* v. *Brown, supra*; cf. *Maryland* v. *EPA, supra*, 530 F. 2d at 226 (affirming federal power to condition ongoing state activities, such as vehicle licensing).

Petitioners emphasize (Pet. 12) that *Brown II* and *District of Columbia* contemplated a federally run inspection and maintenance program as the basis for the registration ban. But the operation of the inspection and maintenance program by the City rather than the federal government adds no new element to the analysis of the validity of the registration ban. Like a federally run program, the program in this case is an externally managed, valid inspection program not requiring any state involvement in its op-

eration.[14] Petitioners are also incorrect in suggesting (Pet. 11-13) that the legal theory underlying the judgment below is inconsistent with *Brown II* and *District of Columbia, supra.* None of these courts relied on the argument that the state could itself be considered a polluter by virtue of its ownership of the streets and highways. Compare *Brown II, supra,* 566 F. 2d at 673; *District of Columbia* v. *Train, supra,* 521 F. 2d at 991; Pet. App. A19. The decisions recognize that state power over access to its roads has never been immune from federal regulation under the Commerce Clause (see National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392(d) (preempting state power over motor vehicle safety requirements); *South Carolina Highway Department* v. *Barnwell Bros., Inc.,* 303 U.S. 177, 189-190 (1938)), nor from the constitutional prohibition implicit in the Commerce Clause. *Bibb* v. *Navajo Freight Lines,* 359 U.S. 520, 529 (1959). Indeed, regulation of traffic on state-owned roads and highways has long been a cooperative effort among federal, state and local governments. *Friends of the Earth* v. *Carey,* 552

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[14] Petitioners' claim that the decision below is inconsistent with the decisions of other circuits because it requires the State to "revoke license plates" without state legislative authority (Pet. 15) is based on an incorrect premise. Neither the Cincinnati Regulation nor the EPA compliance order of June 22, 1976, requires the State to "revoke" license plates. Rather, they simply require the State to refrain from taking affirmative action—issuing a new or renewed license—for nonconforming vehicles. This is precisely the kind of registration ban approved in *Brown II* and *District of Columbia, supra.*

F.2d 25, 38 (2d Cir.), cert. denied, 434 U.S. 902 (1977).[15] Such joint regulation, which imposes only minimal burdens on the state, does not raise issues regarding state autonomy of the sort that concerned the Court in *National League of Cities* v. *Usery*, *supra*, 426 U.S. at 852.

In sum, the decision below represents an application of existing principles to the very narrow factual circumstances presented by the registration ban provision in the Cincinnati Regulation. Further review is not warranted.

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[15] The court of appeals also held petitioners' Fifth Amendment and Guaranty Clause (U.S. Const. art. IV, § 4) claims to be without merit. These ruling are correct. *Baker* v. *Carr*, 369 U.S. 186, 224 (1962); *Railway Express Agency, Inc.* v. *New York*, 336 U.S. 106 (1949); *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955). See *South Terminal Corp.* v. *EPA*, *supra*, 504 F.2d at 673.

Finally, petitioners' claims concerning the ambiguity in the regulation raise no substantial issue. Both lower courts found the Cincinnati Regulation clearly placed an obligation on the State of Ohio to deny registration to noncomplying motor vehicles (Pet. App. A22, A29). No further consideration of this fact bound question is necessary.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1981

APPENDIX

PSO

EMERGENCY

CITY OF CINCINNATI

W.P.H.

AN ORDINANCE NO. 45-1981

Modifying the provisions of the Cincinnati Municipal Code by repealing Chapter 504, "Testing Stations" and all the sections enumerated therein.

WHEREAS, by Ordinance No. 231-1980 council repealed the sections of Chapter 504 dealing with auto safety inspections because the costs incurred in operating the Safety Lane, including proposed capital costs for revitalizing the existing equipment, exceeded the operational revenues, thereby deleting the safety inspection and retaining only the auto emissions inspection; and

WHEREAS, said ordinance provided for the complete closing of the Safety Lane, including the auto inspection program, effective December 31, 1982, the date by which statewide auto emissions testing was to commence; and

WHEREAS, despite efforts to adjust the fees for the remaining auto emissions testing to be commensurate with the operational expenses, the Safety Lane is operating at a projected deficit and is no longer feasible to operate; now, therefore,

BE IT ORDAINED by the council of the city of Cincinnati, state of Ohio:

Section 1. Chapter 504 of the Cincinnati Municipal Code entitled "Testing Stations" and all of the sections enumerated therein is hereby repealed.

Section 2. This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and general welfare, and shall go into effect forthwith. The reason for the emergency is the immediate avoidance of additional financial losses arising out of the operation of the Safety Lane.

Passed February 11 A.D., 1981

/s/ David Mann
Mayor

Attest: /s/ Webster W. Posey
Clerk

I Hereby Certify That Ordinance No. 45-1981 was Published in the City of Cinn. in Accordance With the Charter of 2/24/81.

/s/ Webster W. Posey
Clerk of Council

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